IN THE CORPORATION COURT OF THE CITY OF DANVILLE, VA.

GEO. KEFAUVER AND OTHERS, CONTESTANTS, *v.* HARRY R. FITZGERALD AND OTHERS, CONTESTEES.

June Term, 1913.

1. Constitutional Law—Qualifications of Voters—Power of Legislature to Prescribe.—The Legislature has full power to prescribe the qualification for voters at all elections except as this power is limited by the Constitution. The constitutional provisions with reference to the elective franchise and qualification for office is that found in Sec. 18, Article II of the Constitution of Virginia, which refers only to elections for members of the General Assembly and officers to be elected by the people. Held, that the Legislature has full power to prescribe the qualifications of voters in local option elections.

2. Charter—Consolidation of Municipalities—Repeal by General Law.—The Charter provision of the city of Danville, consolidating the town of Neapolis and the City of Danville and the annexed territory (formerly Neapolis) is a valid law, and is not amended or repealed by the general law governing local option elections.

Petition dismissed.

B. H. Custer, of Danville, Va., for contestants.

Malcolm K. Harris and *E. Walton Brown,* of Danville, Va., for contestees.

The opinion states the case.

OPINION.

R. W. PEATROSS, JR.: The election, the validity of which is challenged in this proceeding, was held in strict accordance with the law which authorized it. This is conceded.

The sole contention of the contestants is, that by the law under which the election was held, persons entitled to vote were deprived of that right, and for that reason the law itself is unconstitutional and the election void. The contention being, that the right to vote in such an election is conferred by the Constitution of Virginia upon all voters in the City of Danville, and that because the law under which this election was held excludes from the right to vote, the voters residing in the fifth and sixth wards, that is North Danville, or Neapolis, and confines the right to vote to qualified voters in the first, second, third and fourth wards, and only such were allowed to vote, the voters in the fifth and sixth wards were denied the right to vote and the election was, therefore, invalid and void.

The only constitutional provision with reference to election franchise and qualification for office is that in Sec. 18 Article II of the Constitution of Virginia and is as follows:

"Every male citizen of the United States, twenty-one years of age, who has been a resident of the State two years, of the County, City or Town one year, and of the precinct in which he offers to vote thirty days next preceding the election in which he offers to vote, has been registered and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people."

It will be observed, therefore, that the Constitution makes no requirements and prescribes no qualifications for voters except in the matter of voting for members of the General Assembly and officers elective by the people. In this local option election, there was no voting for members of the General Assembly, nor for any officer elective by the people. It is manifest, therefore, that no voter could have been deprived in the election of the right to vote secured to him by the Constitution.

Except as restrained or limited by the Constitution the Legislature is supreme in the matter of legislation and law making and the laws made by it are valid until repealed. This right of the Legislature to make laws extends to every subject, even to prescribing ..... qualifications to vote, except in so far as ..... it is limited by the Constitution. The Courts will never hold an Act of the Legislature to be invalid because unconstitutional, unless it be plainly and uncontrovertibly so. Willis *v.* Kalmbach, 109 Va. 475, 64 S. E. R. 348.

In addition to the general power to legislate except as limited by the Constitution of Virginia, the General Assembly of Virginia by Sec. 62 of Article 4 of the Constitution is given "full power to enact local option or dispensary laws, or any other laws controlling, regulating or prohibiting the manufacture or sale of intoxicating liquors."

This power is broad enough to confer upon the General Assembly, (if it did not have it already, being unrestrained in that regard by the Constitution,) the constitutional right to legislate concerning local option and the manufacture and sale of intoxicating liquors in any locality and to prescribe the qualifications for voting in such cases.

In the matter of the election complained of in this proceeding the history and the law are as follows:

Prior to and on the 21st day of January, 1896, the City of Danville and Town of Neapolis, Virginia, were separate municipal corporations, each chartered by the legislature of Virginia.

The councils of said municipalities respectively conceived the idea that it would be well to unite both of the corporations into one municipality under a single charter, under a general plan outlined and under the corporate name of the City of Danville.

These two corporations were separated by the Dan River, which ran between them.

Looking to carrying out and effecting the consolidation of these two municipalities, their respective councils united and procured the passage by the Legislature of Virginia, of an Act which was approved on January 21, 1896, (Acts 1895-6 page 120) which provided for submitting to the qualified voters of the respective corporations the question whether or not the proposed consolidation should be brought about, one of the terms of the submission to the voters in said respective corporations was that Neapolis should constitute one or more wards of said city, and that no license for the sale of intoxicating liquors therein should be granted by the Corporation Court of Danville, until it should be clearly shown in some proper and legal way that public sentiment and a majority of the registered voters of such territory were in favor of such licensing and sale of intoxicating liquors, but the inhabitants of said territory shall not at any time vote upon the licensing and sale of intoxicating liquors in the other wards of said new City or in the said New City at large."

Under and in pursuance of this Act the Judge of the Corporation Court of Danville ordered an election which was duly held in these two corporations respectively, and the plan for consolidation was approved and adopted by both of them.

Thereafter and in pursuance of this action and upon application duly made therefor the legislature of Virginia by an Act approved March 2, 1896 (See Acts of Assembly 1895-6 page 593) amended the then existing charter of the City of Danville, so as to extend the territorial limits of the City of Danville and take within them the territory formerly embraced in the town of Neapolis, and to embrace within the amended charter of the City of Danville, all the things stipulated for in the general plan of the two councils for the consolidation and among them Sec. 5 Chap. 562, page 594 Acts 1895-6 as follows:

"That no license for the sale of intoxicating liquors in said annexed (the Neapolis) territory shall be granted by the Corporation Court of the City of Danville until it shall be clearly shown in some proper and legal way that public sentiment and a majority of the registered voters of said annexed territory shall be in favor of such licensing and sale of intoxicating liquors, but the inhabitants of such annexed territory shall not

at any time vote upon the licensing and sale of intoxicating liquors in the other wards of said City, or in the said new City at large."

This provision is in the present charter of the City of Danville. It was inserted at the instance of and after approval by the registered and qualified voters of the two former corporations respectively. It has never been altered or amended. The territory of Neapolis composes the fifth and sixth wards of the City of Danville, and the remaining territory of the City of Danville comprises the first, second, third and fourth wards of the City. No liquor has been licensed to be sold in the fifth and sixth wards of the City of Danville since the consolidation of the two municipalities into the present City of Danville, nor has any been asked for, neither have the voters in the fifth and sixth wards of the City of Danville ever asked to vote or been treated as entitled or allowed to vote in any local option election in the other four wards of the City since the consolidation and the adoption of said charter although there have been repeated local option elections in said four wards since that time.

The Legislature of Virginia had full power to grant this charter to the City of Danville, with this provision in it. It was and is a valid and valuable provision concerning the control of evils that are recognized as belonging, for control, to the police power of a City or community.

These provisions of the Charter have not been amended or repealed. They do not conflict with anything in the Constitution of Virginia and are specifically preserved by Sec. 117 Article 8 of the Constitution, page CCXXXIII in these words:

"But each of the cities and towns of the State, having at the time of the adoption of this constitution a municipal charter may retain the same except so far as it may be repealed or amended by the General Assembly, etc., etc."

The law authorizing the election complained of was valid, the election was held in accordance with it. No one is shown to have been deprived of the right to vote, nor has the election been shown to be undue or invalid, but the Court is of opinion that it was duly held and was valid and that the petition must be dismissed, and the petitioners pay the cost.